

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and remarks.

A. Status of the Claims

Claims 12, 17, 22, 26-28, 51, 56-58 and 60 are requested to be cancelled. Claims 1, 13, 16, 19, 23, 25, 49, 52 and 55 are currently being amended. Claims 62-68 are being added. Claims 2-9, 29-48 stand withdrawn in light of an election of species previously entered. After amending the claims as set forth above, Claims 1-11, 13-16, 18-21, 23-25, 29-50, 52-55, 59 and 61-68 are now pending in this application.

B. Amendments to the Specification

The first paragraph of the application has been amended to conform the claim of priority to the form suggested by the MPEP and to correct the filing date provided for Application No. 07/798,288. New paragraphs 0014a, 0014b, and 0014c have been added to describe Figures 6-8. Paragraph 0015 has been amended to specifically refer to Figures 6-8, these figures being submitted with the originally filed application. No new matter has been added in these amendments.

C. Objection to the Specification

In paragraph 1 of the Office action, the Examiner has objected to the specification stating that “[t]he drawings of Figs. 6-8 are not discussed in the specification.” As discussed above, a description of Figures 6-8 has been added to the “Brief Description of the Drawings” section of the application. The “Description of the Preferred Embodiment” section of the application has also been amended to specifically refer to Figures 6-8. Accordingly, Applicants believe that the Examiner’s objection has been overcome.

D. Claim Rejections – Double Patenting

In paragraph 2 of the Office action, the Examiner has rejected Claims 1, 10-28, and 49-61 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5,539,930. The Examiner stated that “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to eliminate the article of clothing and other limitations when they are not needed to provide an accessory device as claimed.”

U.S. Patent No. 5,539,930 is the subject of a re-examination now Application No. 90/007,331 and therefore rejection of Claims 1, 10-28 and 49-61 under the judicially created doctrine of obviousness-type double patenting is no longer warranted. Therefore, this rejection of the claims should be withdrawn.

E. Claim Rejections – 35 U.S.C. § 102(e) and 102(b)

In paragraph 3 of the Office action, the Examiner has initially rejected Claims 1, 15, 49, and 54 under 35 U.S.C. § 102(e) as allegedly being anticipated by Neal et al. (5,129,735). The Examiner stated that “Neal teaches a storage device having a carbon layer 22 to absorb odors of the articles stored inside the storage device.”

The claimed invention is not anticipated under § 102 unless each and every element of the claim is found in the prior art. Hybritech, Inc. vs. Monoclonal Antibodies, Inc. 231 US PQ 81, 90 (Fed Cir 1986).

Neal et al. does not identically disclose the combination of elements recited in the presently amended independent Claims 1 and 49. Neal et al. shows a plastic trash compactor bag formed from a composite layer of two plastic films, one of which has carbon particles embedded therein. Independent Claims 1 and 49 as amended recite a combination including, among other elements, a storage device having a base layer incorporating activated carbon and a camouflage color scheme provided on an outer surface of the storage device. The combination of these two

elements are not identically disclosed in Neal et al. Accordingly, amended independent Claims 1 and 49 (and corresponding dependent Claims 15 and 54) are not anticipated by Neal et al. under 35 U.S.C. § 102(e) and are patentable. The activated carbon provides the function of absorbing odors of the articles stored inside the bag to reduce the chances of wildlife detecting these articles through their acute sense of smell. The camouflage color scheme on the exterior of the product reduces the chances of the wildlife from visibly detecting the storage device. Therefore, the storage device as described in Claims 1 and 49 incorporate means to reduce the chance of detection of the storage device by wildlife visibly and detection of the articles stored therein through their acute sense of smell. The combination of these concepts is not identically disclosed in Neal.

In paragraph 5 of the Office action, the Examiner rejected Claims 1, 11, 15-18, 49, 50, 55-56, and 59 under 35 U.S.C. § 102(b) as being allegedly anticipated by Brooker et al. (4,797,318). The Examiner asserts that “Brooker teaches a storage device having a base layer incorporating activated carbon (see abstract; col. 5, ln. 36).”

Brooker et al. does not identically disclose the combination of elements recited in independent Claims 1 and 49 as amended. Brooker et al. teaches vacuum cleaner bags formed from a web of woven or non-woven material incorporating or integrating an odor absorbing agent such as carbon. Independent Claims 1 and 49 as amended recite a combination of activated carbon and a camouflage color scheme, among other elements, which is not identically disclosed in Brooker et al. Accordingly, independent Claims 1 and 49 (and corresponding dependent Claims 11, 15-18 and 50) are not anticipated by Brooker et al. under 35 U.S.C. § 102(e) and are patentable.

F. Claim Rejections – 35 U.S.C. § 103(a)

In paragraph 6 of the Office action, the Examiner rejected Claims 1, 14-18, 49-50, 53-56, and 59 under 35 U.S.C. § 103(a) as being unpatentable over Daley (3,200,427) in view of Pontius (5,022,553). The Examiner asserts that “Daley teaches a storage device having a layer 25 of odor

counteracting material” and concludes that “it would have been obvious to one of ordinary skill in the art to provide have the pad 25 be impregnated with activated carbon material in Daley as taught by Pontius to provide the desired means for eliminate foul odor.”

Claims 1 and 49 are in independent form. Dependent Claims 14-18 and dependent Claims 50, 53-56, and 59 depend from independent Claims 1 and 49, respectively. Claims 1 and 49, as amended, recite a combination including, among other elements of a storage device having a base layer incorporating activated carbon and a camouflage color scheme provided on an outer surface of the storage device.

The subject matter recited in amended independent Claims 1 and 49 would not have been obvious over Daley in view of Pontius under 35 U.S.C. § 103(a). Daley teaches a shoe tree accessory comprising a covering 14 adapted to support an absorbent pad 25. Pontius shows diaper storage container formed from a rigid outer shell 20, a lid 28 adapted to enclose the container and a removable mounted liner 32 capable of absorbing noxious odors from the diapers stored therein. The pad 32 is impregnated with activated carbon particles.

The rejection of these claims based upon the combination of Daley and Pontius is not warranted for several reasons. First, there is no teaching, suggestion or motivation for combining Daley and Pontius. The combination of these references is merely the result of hindsight reconstruction. Second, the combination of Daley and Pontius would not result in the subject matter recited in the amended independent Claims 1 and 49, or corresponding dependent Claims 14-18, 50, 53-56, and 59. Neither Daley nor Pontius, alone or in any proper combination disclose, teach or suggest the concept of integrating activated charcoal and provide camouflage on the outer surface of the storage device to reduce the chances of detection of articles stored in said storage device through the wildlife’s acute sense of smell or to visibly detect the storage device as recited in amended Claims 1 and 49. Moreover, the suggestion to make the combination of Daley and Pontius has been taken from Applicant’s own specification (using hindsight), which is improper. Furthermore, to transform the combination of Daley and Pontius to incorporate a camouflage color scheme recited in amended independent Claims 1 and 49

would require still further modification, and such modification is taught only by Applicant's own disclosure.

The subject matter recited in independent Claims 1 and 49, considered as a whole, would not have been obvious to a person having ordinary skill in the art. The rejection of the amended independent Claims 1 and 49 (and corresponding dependent Claims 14-18, 50, 53-56, and 59) over Daley in view of Pontius under 35 U.S.C. § 103(a) is improper. Therefore, Claims 1, 14-18, 49-50, 53-56, and 59, as amended herein, are patentable over Daley in view of Pontius.

In paragraph 7 of the Office action, the Examiner rejected Claims 1, 10-28, and 49-61 under 35 U.S.C. § 103(a) as being unpatentable over Mills et al. (2,959,789) in view of any one of Langston (GB 2,207,390), Winfield (Technical Bulletin Sar-3), or Arons et al. (4,217,386), or in the alternative, over any one of Langston, Winfield, or Arons et al. in view of Mills et al.

Claims 1, 19, and 49 are in independent form. Dependent Claims 10-18, 20-28, and 50-61 depend from independent Claims 1, 19, and 49. Claims 1, 19, and 49 as amended recite a combination including, among other elements, a storage device/duffel bag incorporating either an odor absorbing agent/activated carbon to reduce the chances of detection of articles stored inside the storage device/duffel bag by wildlife through their acute sense of smell in combination with a camouflage color scheme provided on the outer surface of the storage device or duffel bag to reduce the chances of visible detection of the storage device by wildlife.

The subject matter recited in independent Claims 1, 19, and 49 would not have been obvious over Mills et al. in view of any one of Langston, Winfield, or Arons et al. under 35 U.S.C. § 103(a). Mills et al. shows a dual purpose article, namely a coat which is convertible into a duffel bag for the storage of various articles. Langston, Winfield, or Arons et al. each show a fabric in which activated carbon is provided wherein the fabric is suitable for use in protective clothing such as toxic chemical applications. However, the combination of Mills et al. and any one of Langston, Winfield, or Arons et al. would not result in the subject matter recited in amended independent Claims 1, 19, and 49, or corresponding dependent Claims 10-18, 20-28,

and 50-61. Neither Mills et al. nor any one of Langston, Winfield, or Arons et al., alone or in any proper combination, disclose, teach or suggest the invention as recited in amended Claims 1, 19, and 49. Moreover, the suggestion to make the combination of Mills et al. and any one of Langston, Winfield, or Arons et al. has been taken from Applicant's own specification (using hindsight), which is improper. Furthermore, to transform the combination of Mills et al. and any one of Langston, Winfield, or Arons et al. to the invention recited in amended independent Claims 1, 19, and 49 would require still further modification, and such modification is taught only by Applicant's own disclosure.

The rejection of these claims based upon the combination of Mills et al. and any one of Langston, Winfield, or Arons et al. is not warranted for several reasons. First, there is no teaching, suggestion or motivation for combining Mills et al. with one or more of Langston, Winfield, or Arons et al. The combination of these references is merely hindsight reconstruction. Second, the combination of Mills et al. and any one of Langston, Winfield, or Arons et al. would not result in the subject matter recited in amended independent Claims 1, 19 and 49, or corresponding dependent Claims 14-18, 50, 53-56, and 59. Neither Langston, Winfield, or Arons et al., alone or in any proper combination disclose, teach or suggest the invention as recited in Claims 1, 19 and 49. Furthermore, to transform the combination of Langston, Winfield, or Arons et al. to the invention recited in amended independent Claims 1 and 49 would require still further modification, and such modification is taught only by Applicant's own disclosure.

The subject matter recited in independent Claims 1, 19, and 49, considered as a whole, would not have been obvious to a person having ordinary skill in the art. The rejection of independent Claims 1, 19, and 49 (and corresponding dependent Claims 10-18, 20-28, and 50-61) over Mills et al. in view of any one of Langston, Winfield, or Arons et al. under 35 U.S.C. § 103(a) is improper. Therefore, Claims 1, 10-28, and 49-61 are patentable over Mills et al. in view of any one of Langston, Winfield, or Arons et al.

In paragraph 4 of the Office action, the Examiner rejected Claims 14 and 53 under 35 U.S.C. § 103(a) as being unpatentable over Neal et al. Claims 14 and 53 depend from amended

independent Claims 1 and 49, respectively. As discussed above, Neal et al. does not disclose all the limitations of independent Claims 1 and 49, as amended. Consequently, Neal et al. also fails to disclose all the limitations of Claims 14 and 53. Accordingly, Applicants respectfully request reconsideration and allowance of dependent Claims 14 and 53.

G. New Claims

Submitted herewith are new method claims 62-68. These claims describe the basic method of utilizing the accessory storage pack to reduce odors thereby reducing the chances of detection of the articles stored in the storage pack or the storage pack itself by wildlife. As described further below, the invention described in claims 62-68 along with the article claims previously presented in this case are not obvious in light of the extensive evidence of secondary considerations of non-obviousness which is attached and discussed further below.

H. Secondary Considerations of Non-Obviousness

The Applicant submits that the invention as described in all pending claims is not obvious in light of the teachings of the prior art. An obviousness determination is typically made in a vacuum with reference only to patents as prior art references. However, both the courts and the MPEP (See MPEP 716.01 – 716.09) have provided instruction expressly stating that secondary considerations of non-obviousness are often the best evidence to utilize in evaluating the potential obviousness of a claimed innovation.

Evidence of secondary considerations must always when present be considered in the process of determining obviousness, ... it may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious was not. *Fromson v. Advance Offset Plate, Inc.*, 225 USPQ 27,33 (Fed. Cir. 1985).

In this case, the Patent owner is submitting extensive evidence to show that the innovations described in the claims are not obvious based upon the prior art, but instead are pioneering innovations.

During the prosecution of U.S. Serial No. 07/798,288 and U.S. Patent No. 5,383, 236, both parent applications to the present application, the Patent owner submitted numerous declarations to support its position that the claimed invention was not obvious in light of the prior art. Copies of the following previously submitted declarations are being resubmitted in this application as Exhibit 1:

Declaration of Gregory Sesselmann

Declaration of Kathy Etling

Declaration of Brad Clinton

Declaration of Denny Geurink

Declaration of John David Love

Declaration of James C. Hill

Since these declarations were executed in 1993, the evidence supporting the Applicant's position that the claimed innovations are not obvious in light of the prior art has only continued to grow. Further objective evidence attesting to the nonobviousness of the inventor's innovations is found in the following attached declarations:

Declaration of Myles Keller (Exhibit 2)

Declaration of Everett Tarrell (Exhibit 3)

Declaration of Greg Paquin (Exhibit 4)

These declarations contain objective evidence related to the unexpected results achieved with the inventor's innovation, the long-felt need for this innovation, the commercial success of the Applicant's products embodying the innovations, and the early skepticism of experts in the relevant field regarding the innovations.

i. Long-Felt Need

The Keller declaration (Exhibit 2) is quite instructive in understanding and appreciating the long-felt need relating to the inventor's innovation. Myles Keller has over 40 years of experience hunting wildlife and over 20 years of experience in developing and promoting scent

control products for sale in the hunting industry. Based upon this extensive experience, there are very few, if any, individuals who have as much specialized experience in the development, use and sale of scent control hunting products as Myles Keller. In light of this experience, Mr. Keller is uniquely qualified to comment upon the long-felt need for effectively eliminating and controlling odors while hunting in order to avoid detection of the hunter by wildlife. In order to appreciate the long-felt need, it is important to understand the scope of the problem solved.

Mr. Keller notes in his Declaration that the sense of smell for deer is 100 to 1,000 times more sensitive than the human sense of smell (Keller Decl. ¶ 6). For at least 20 years prior to the inventor's innovation, the primary means used by hunters to combat human odors was the use of cover scents (Keller Decl. ¶ 7). Even though Keller has developed, sold and promoted these products for over 30 years, he has recognized the limitations of cover scents in that a deer can still detect human odor by filtering the human odor from the cover scent or alternatively by being alerted to danger in light of an unnatural level of concentration of the cover scent in the wild (Keller Decl. ¶ 7). Still another problem with cover scents is that they are temporary and the user must reapply the scent in order to achieve a moderate level of success (Keller Decl. ¶ 7). Based upon this analysis, it would appear that cover scents have not satisfied the problem of providing hunters with an effective means of eliminating odor in a wide variety of hunting conditions for a significant period of time.

Based upon his extensive hunting and manufacturing experience, Keller also describes the use of odor neutralizing soaps and detergents (Keller Decl. ¶ 8). Once again, these products were developed in an attempt to effectively eliminate odor while hunting and once again, these products have fallen short of accomplishing this goal. The human body continuously produces and emits odors and therefore the benefits realized by the use of a odor neutralizing soap is temporary and quickly fades (Keller Decl. ¶ 8). Another temporary odor control device used in the hunting product marketplace, was a liquid spray containing an odor absorbing compound or use of a dry powder such as baking soda (Keller Decl. ¶ 9). Hunters would spray or sprinkle these compounds on their body as they enter the woods. Keller advises us that these products

have only met with moderate success because they once again are temporary in nature and are limited in their effectiveness in eliminating human odor. Moreover, hunters typically hunt in remote areas many miles from roads and the like. Therefore, hunters must be selective as to the gear that they transport into the field. Unfortunately, these bulky sprays and powders would often be left behind in favor of more important gear.

As described in paragraph 11 of his declaration, Keller notes that he has actually used odor absorbing products manufactured by the owner of the present application and this product incorporated activated charcoal on an air permeable base layer. The activated charcoal was securely mounted to the fabric through use of an adhesive.

In light of his use of the products of the owner of the present application embodying the innovation and his knowledge of the scent control industry, Keller makes the following statement in paragraph 12 of his declaration:

Based upon my 40 years of practical hunting experience and 20 years of odor control hunting experience, the single most important development in the hunting products industry since I became involved with these products is the odor-absorbing garments and method for using these garments invented by Gregory Sesselmann.

Additional evidence regarding the long-felt need of the inventor's innovation is found in the declarations of Kathy Etling, Brad Clinton, Denny Geurink, James C. Hill and John David Love (see Exhibit 1). These declarations all attest to the long-felt need in the hunting industry for a product which will effectively combat the acute sense of smell by wildlife. These declarations all discuss the problems encountered with the prior art solutions such as cover scents. These declarations also specifically attest to the fact that the inventor's innovation has satisfied this long-felt need in the industry.

ii. Commercial Success

Extensive evidence of the commercial success of the inventor's innovation is also submitted herewith. First, submitted herewith is the declaration of Everett Terrell. This

Declaration is probative because Terrell was the Hunting Clothing Buyer and Divisional Merchandise Manager for Cabela's, Inc. during the timeframe in which the Patent owner's odor absorbing products were introduced to the hunting industry. Therefore, Mr. Terrell has had a unique position in which to watch and monitor the commercial success of these products over the past thirteen years. One of the critical points to understand in appreciating the commercial success of the innovation is the fact that the inventor's innovation is not merely an incremental improvement in an already crowded marketplace. Rather, the inventor's innovation created an entirely new marketplace which prior to the innovation did not exist (Tarrell Decl. ¶¶ 3, 4 and 5 and Keller Decl. ¶ 16). Since these products were introduced in 1992, the market has grown from zero dollars to an estimate in excess of \$100 million (Tarrell Decl. ¶ 5).

In paragraph 7 of his declaration, Tarrell provides valuable information to help put these astounding market figures in perspective. Specifically, the inventor listed on the Patent, Greg Sesselmann, started as a sole inventor who had extremely limited capital, little or no experience in manufacturing clothing products and little or no experience in the marketing and sales of hunting products. Despite these significant obstacles, Mr. Sesselmann, through his company ALS (the owner of the present application) was able to create a new market for odor absorbing hunting garments and accessories which now exceeds \$100 million. All of this was accomplished in only 13 years.

Still additional information regarding the commercial success of the innovation is found in the declaration of Greg Paquin. Mr. Paquin is the licensing manager of ALS, the Assignee and owner of the Patent and of all issued patents and pending applications claiming priority from the parent application of the Patent. As described in paragraphs 5-7 of the Paquin declaration, ALS has successfully licensed its innovations to 22 different licensees. These licensees are leaders within their respective markets and industries such as Cabela's, Inc., Bass Pro Shops, Inc., Gander Mountain Company, Robinson Outdoors, Inc., Browning Arms Company, Wolverine Worldwide, Inc. and W.L. Gore & Associates, Inc. The licensees Bass Pro Shops, Inc., Gander Mountain Company, and Cabela's, Inc. are within the top five retailers of hunting apparel in the

United States (Paquin Decl. ¶ 5). Milliken & Company along with W.L. Gore & Associates, Inc. are two leaders within the fabric industry that are involved in the manufacturing of ALS garments and licensed products (Paquin Decl. ¶ 5). Therefore, not only has ALS secured a large number of licensees, but many of the licensees or entities involved in the manufacturing and production of ALS products and licensed products are significant leaders within their respective industries. These facts present strong, objective evidence of the commercial success of the innovation.

Another objective measure of the commercial success of the inventor's innovation is found in the growth in consumption of yardage of odor absorbing fabric used for the creation of such odor absorbing products. Yardage consumed has grown from a mere 2,600 yards in 1992 to an estimated 1,000,000 yards to be consumed for 2006 (Paquin Decl. ¶ 6). Similarly, the cumulative estimated retail sales of odor absorbing products manufactured and sold by ALS and its licensees has grown from 140,000 in 1992 to nearly 57,000,000 in 2006 (Paquin Decl. ¶ 7). This growth has resulted in the astounding annualized growth in yardage of fabric and retail sales of 53% over the past twelve years. There are very few, if any, products in the marketplace which can demonstrate this level of commercial success in such a short period of time.

Still another measure of commercial success of the innovation is found in the industry awards that the Patent owner has received for its products. ALS was awarded a Buyer's Choice Gold Medal Award from Cabela's, Inc. for its odor absorbing clothing (Paquin Decl. ¶ 11). The Cabela's award specifically identifies ALS' Scent Lok™ clothing as "perhaps the most significant break-through in the hunting garment industry in years" (Buyer's Choice Gold Medal Award). ALS Scent Lok clothing was also selected as a "Best Buy Winner" for 2003 by *Inside Archery* magazine and *Bow Hunting World* awarded Scent Lok its 2004 Reader's Choice Award for scent eliminating clothing (Paquin Decl. ¶ 11).

The commercial success of the Patent owner is clearly documented in light of the number of licensees of the innovation, the relative position of these licensees within their respective marketplace, the growth of commercial sales of products embodying the innovations over the

past twelve years along with the industry awards the Patent owner has received in regards to its products.

iii. Unexpected Results

Perhaps the best evidence of the unexpected results realized by the Patent owner is found in the unsolicited testimonials submitted by hunters who have used the Patent owner's odor absorbing products and method to avoid detection by wildlife. Copies of these unsolicited testimonials are attached as Exhibit A to the Paquin declaration and relevant quotes from these unsolicited testimonials include the following:

“Sirs, I thought I would write you and tell you of some of my experiences with your clothing. . . . There is no question in my mind that Scent Lok is the reason for my success. This is a GREAT product and it should be a part of every big game hunters wardrobe. . . . This stuff works! . . . Thanks for the great product, I wish I had thought of it.” (T.R. Michels, T.R. Michels Guide Service)

“Having hunted in many states and Canadian provinces I have never experienced the close encounters as I did in Wyoming this fall. . . . Having hunted whitetails for over 20 years, of course I had doubt that anything would eliminate human odor from the whitetails nose. . . . Now here's why I'm writing this story so read carefully. I now have an adult whitetail doe and two fawns nursing 3 yards down wind of me. . . . That's not all – a few minutes later I had a small 6 point whitetail buck stick his head right through the sage that I had surrounded my blind, at a total distance of 1 foot away from my face. I couldn't believe it, all 9 of the whitetails moved downwind of me no further than 4-5 yards away and never knew I was there. . . . This story might sound incredible but it is the truth. The Scent Lok suit had to do its job.” (Martin Stubstad)

“Please allow me to introduce myself as a Wildlife Officer (Game Warden) with the Florida Game and Freshwater Fish Commission. . . . After reading articles about your “Scent Lok” clothing in several outdoor magazines, I decided to purchase a

set for the upcoming doe season in Florida. I have to admit that I was somewhat skeptical about it working, but thought I would give it a try! . . . This was by far, the best archery season I have ever had. On numerous occasions I had deer directly downwind from me and 3 of the deer I killed were less than 10 yards away, downwind. It was amazing for me to see deer downwind that did not spook. I have tried odor eliminating sprays and cover scents in the past, but did not have favorable results. Your product was something else! Several times, I had deer remain downwind and feeding for over 30 minutes without picking up my scent. . . . I would like to close by saying thanks for a great product and certainly to feel free to use me for a reference if needed.” (Lane J. Kinney, Wildlife Officer)

“I wish to thank you for your fantastic Scent-Lok Clothing! . . . One place I really wanted to try the suit at was an area that had fantastic sign, but the wind would swirl into corner where I placed my stand and it seemed no matter how much cover scent I used (I am very careful with cover scents using only what is right for my area and bagging all my exterior clothes, showering with no scent products and dressing at the site) or which direction the wind came from I never have any luck at hunting this spot. . . . All of a sudden a huge buck walked out of the northeast! I couldn’t believe my eyes he could not have come in from any worse of a direction according to the way the wind is blowing. (This is hard to explain with words but I can’t see how this mature buck could possibly not smell me from the direction he entered the field.) He was only ten yards away and all I could do was pull back my bow and shoot . . . I sincerely believe that without your suit I would never have shot this buck.” (Kurt Pesch)

“I have always been very aware of wind direction and trying to keep my scent to a minimum. Hunting for over 20 years I have experimented with many different techniques to help eliminate human scent without having the success I have been looking for. Speaking to many outfitters in Ontario and Manitoba they are

absolutely convinced that your Scent-Lok suits work. The success they are having now compared to before without the Scent-Lok suits is amazing.” (Kenn Dandeneau)

“Just wanted to send a note of thanks out to you . . . In the 25 years that I have been hunting, I have never had a deer come in so close to me, unaware of my presence, and I truly believe that it is because of your product. I must have seen 50 different deer this last year and not one of them showed signs that they detected my scent. From 7 to 80 yards away they never looked up once. . . . Thanks again for your terrific product. I will never go in the woods without it again.” (Jim Opdyke)

MPEP § 716.02(a)(I) instructs that a significant difference between results using the prior art versus the claimed innovation can be an important inquiry when determining nonobviousness. As noted above, the unsolicited testimonials submitted by hunters suggest that the results realized according to the inventor’s innovation are of a significant, practical advantage and are unexpectedly superior to the closest prior art. Additional objective evidence on this point is found in the Etling declaration, paragraphs 8-11, the Clinton declaration, paragraphs 9-11, the Love declaration, paragraphs 7 and 8, and the Hill declaration, paragraphs 7-10 (all of which are found in Exhibit 1).

iv. Skepticism of Experts

MPEP § 716.05 states that expressions of disbelief by experts constitute strong evidence of nonobviousness. Upon the introduction of the odor absorbing products and the method for using these products by ALS to the hunting products marketplace, there was a great deal of skepticism in the hunting community regarding the effectiveness of an odor absorbing agent such as activated charcoal integrated into such articles. Examples of such skepticism are found in many of the previous mentioned testimonials and numerous trade journal articles attached as Exhibit B to the Paquin declaration (Exhibit 5). Relevant excerpts of these trade journal articles include the following:

“You don’t have to be very old to remember the first carbon suit that Greg Sesselmann of Scent-Lok introduced in 1992 to usher in a new age of scent control for bow hunters. Even so, it’s easy to forget this ever expanding product category had to overcome much skepticism in its early days. But as more bow hunters experimented with Scent-Lok garments and experienced the effectiveness firsthand, the good word spread quickly. This stuff worked!” (“Stifling Human Odor” by Patrick Durkin, *Inside Archery*, August 2003).

“As promised in my January 3 letter, I’m letting you hear how things have gone for me while field testing your SCENT-LOK products. . . . On two occasions while hunting from a tree stand overlooking multiple trails leading to a water source, I had deer under and around my stand. Despite a constantly switching wind, not once did any of the deer detect my presence -- at one point I had five mule deer (two bucks and a doe with twin fawns) within 15 to 20 yards of my tree. I attribute the fact I remained undetected directly to your odor eliminating clothing. . . . To say I was impressed by the effectiveness of your products is an understatement.” (N.R. James, Editor of *Bowhunter* magazine)

“We have an advantage eliminating our human scent since the company Scent-Lok pioneered the odor eliminating clothing technology back in 1992 with their original Scent-Lok liner which you wear under your favorite camo. This technology quickly gained acceptance among savvy big game hunters. When they simplified things by incorporating their product into camouflage outerwear, the response was overwhelming. It has taken the industry by storm, and now we see this technology incorporated into much of our hunting clothing and lots of our accessories.” (“What About Fooling the Nose” by Dick Scorzatava, *Bear Hunting* magazine, July-Aug. 2003)

“Greg Sesselmann of Scent-Lok pioneered the use of activated carbon in hunting clothing.” (*Inside Archery*, Sept. 2004)

“Today, the masking scent market has dwindled as human scent control shifted from a cover up strategy to scent containment tactics. In my book, the vision cast by Greg Sesselmann utilizing activated carbon to give us Scent Lok odor control clothing is the future. Skeptical at first of all the talk about molecular levels, scent absorption and anti-microbial fabrics, I’ve become increasingly convinced that scent containment clothing is as important to my hunting equipment as my most trusted Hoyt bow and reliable Easton arrows.” (“Reflections” by Jim Dougherty, *Inside Archery*, Sept. 2004)

As is clearly obvious from the arguments presented above and the evidence attached hereto, Applicants innovations were pioneering in the hunting products industry and in fact created a whole new market within this product category. This overwhelming commercial success was not a result of overwhelming advertising but rather was a reflection of the uniqueness of the idea, long-felt need and the unparalleled performance of these products. In light of all of this evidence, it is clear that Applicant’s innovations are not a mere obvious modification of a very old, well-established prior art.

* * * *

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit

Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date

May 17, 2006

By

Richard J. McKenna

FOLEY & LARDNER LLP

Customer Number: 26371

Telephone: (414) 297-5723

Facsimile: (414) 297-4900

Richard J. McKenna

Attorney for Applicant

Registration No. 35,610